United Nations A C.5/71/10

General Assembly

Distr.: General
26 October 2016

Original: English

Seventy-first session
Fifth Committee
Agenda item 145
Administration of justice at the United Nations

Letter dated 26 October 2016 from the President of the General Assembly to the Chair of the Fifth Committee

I have the honour to transmit herewith a letter dated 26 October 2016 from the Chair of the Sixth Committee, Danny Danon, on the administration of justice at the United Nations (see annex).

(Signed) Peter **Thomson**

16-18699 (E) 271016

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Annex

I have the honour to write to you with regard to agenda item 145, Administration of justice at the United Nations.

As you are aware, at its 2nd plenary meeting, on 16 September 2016, the General Assembly, upon the recommendation of the General Committee, referred the agenda item to both the Fifth and Sixth Committees. In paragraph 43 of its resolution 70/112, the Assembly invited the Sixth Committee to consider the legal aspects of the report to be submitted by the Secretary-General, without prejudice to the role of the Fifth Committee as the Main Committee entrusted with responsibilities for administrative and budgetary matters.

During the present session, the Sixth Committee considered the item at its 16th meeting, on 14 October 2016, as well as in informal consultations held on 12, 18 and 21 October. The Sixth Committee considered the legal aspects of the report of the Secretary-General on the administration of justice at the United Nations (A/71/164), the report of the Secretary-General on the activities of the Office of the United Nations Ombudsman and Mediation Services (A/71/157) and the report of the Internal Justice Council (A/71/158), which included, in annexes, the memorandum submitted by the judges of the United Nations Dispute Tribunal on systemic issues and the comments submitted by the judges of the United Nations Appeals Tribunal. The Committee also had before it the note by the Secretary-General transmitting the report of the Interim Independent Assessment Panel on the system of administration of justice at the United Nations (A/71/62/Rev.1) and the report of the Secretary-General on the findings and recommendations of the Interim Independent Assessment Panel and revised estimates relating to the programme budget for the biennium 2016-2017 (A/71/163).

During the informal consultations held on 12 October, the Chair of the Internal Justice Council and the Executive Director of the Office of Administration of Justice made presentations and remained available, along with representatives of other units of the Secretariat, to provide answers and clarifications to delegations, which were very grateful for the opportunity.

I should draw your attention to a number of specific issues related to the legal aspects of those reports, as discussed in the Sixth Committee.

Delegations expressed their appreciation to the Secretary-General for his comprehensive report submitted pursuant to resolution 70/112, as well as the report on the activities of the Office of the United Nations Ombudsman and Mediation Services. Delegations took note of: (a) the data provided with respect to cases within the formal internal justice system and the observations made with respect to the data and emerging trends; (b) the information provided with respect to disputes involving non-staff personnel; (c) the information provided with respect to the outcome of matters involving the accountability of managers whose decisions have been established to be grossly negligent, according to the applicable Staff Regulations and Rules of the United Nations, and which have led to litigation and subsequent financial loss; (d) the information provided with respect to the effectiveness of the Management Evaluation Unit of the Department of Management; (e) the information provided with respect to the voluntary supplemental funding mechanism for additional resources for the Office of Staff Legal Assistance of the Office of Administration of Justice; (f) the information provided with respect to the implementation of the amendment to article 11, paragraph 3, of the statute of the Dispute Tribunal and to article 7, paragraph 5, of the statute of the Appeals Tribunal, including with respect to the administrative implications, any implications for the timely disposal of those cases, the ultimate disposition of appeals of orders, if any, and any costs saved by reason of stays pending such appeals; (g) the publication of the statutes of the Tribunals as amended since their initial adoption by the Assembly; (h) the report on progress made in the implementation of recommendations to address systemic and cross-cutting issues contained in the report of the Secretary-General on the activities of the Office of the United Nations Ombudsman and Mediation Services; and (i) the promulgation of the revised terms of reference and guidelines for the Office of the United Nations Ombudsman and Mediation Services.

Delegations took note with appreciation of the report of the Internal Justice Council. They also took note with appreciation of the report of the Interim Independent Assessment Panel on the system of administration of justice at the United Nations and its findings that the system has made a good start and is an improvement over the previous system, and that the aims and objectives of the system have been achieved to a very great extent. However, delegations also recognized that there was still room for improvement. Delegations also took note with appreciation of the report of the Secretary-General on the findings and recommendations of the Interim Independent Assessment Panel and revised estimates relating to the programme budget for the biennium 2016-2017.

Independence of the judiciary

While emphasizing the need for effective cooperation and coordination between the Fifth Committee and the Sixth Committee, and while noting the report of the Advisory Committee on Administrative and Budgetary Questions on this item (A/71/436), the Sixth Committee once more underlined that, under its resolution 61/261, the General Assembly had decided that the new system of administration of justice should be independent, transparent, professionalized, adequately resourced and decentralized, consistent with the relevant rules of international law and the principles of the rule of law and due process to ensure respect for the rights and obligations of staff members and the accountability of managers and staff members alike. Delegations were therefore of the view that, when considering the various proposals set out in the above-mentioned reports that may have financial implications, the Assembly should take duly into account paragraph 4 of its resolution 61/261.

Some delegations supported the strengthening of the Management Evaluation Unit, the Office of Staff Legal Assistance and the Registries of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, and stressed that adequate resources were needed to ensure the independence and effectiveness of the formal and informal systems. Other delegations were of the view that recommendations with financial implications should be discussed in the Fifth Committee. Delegations took note of the observations of the Chair of the Internal Justice Council during the briefing, who stated that an underresourced system could potentially generate additional costs owing to procedural inefficiencies.

Knowledge of the system and outreach activities

Delegations welcomed the efforts reported by the different parts of the system of administration of justice to inform staff about available sources of legal and other advice and about the possibilities of securing legal representation in the system. The Sixth Committee, in line with recommendation 9 of the report of the Interim Independent Assessment Panel (A/71/62/Rev.1, paras. 198 and 199), also welcomed the information provided by the Secretary-General on outreach activities and emphasized the important role of those activities in ensuring universal accessibility to the system of administration of justice at the United Nations. Delegations urged the Secretariat to strengthen and increase outreach activities with a view to providing information on the role and functioning of the various parts of the system and the possibilities it offered to address work-related complaints, including to non-staff personnel, paying particular attention to field missions and offices.

Jurisprudential guides

As previously noted by the Sixth Committee (see A/C.5/69/10, annex), full and accurate availability of and easy access to the jurisprudence of the Tribunals has an important legal dimension since it allows staff and management, as well as anyone acting as a legal representative, to inform themselves about the latest developments of the jurisprudence, to establish precedents that could guide the assessment of other cases and to better understand relevant rules and regulations as applied by the Tribunals. In this regard, the Sixth Committee noted that the Interim Independent Assessment Panel recommended that the Office of Administration of Justice further improve the search engine of the Tribunals' jurisprudence (A/71/62/Rev.1, recommendation 12 and para. 199) and that the Organization enhance the provision of jurisprudential guides (ibid., recommendation 22 and para. 236). The Committee further welcomed the updated search engine, which had been available since August 2016. The Committee highlighted the value of the preparation of summaries and keywords for each judgment of the Tribunals in order to assist all staff in understanding the Tribunals' jurisprudence.

Informal system

The Sixth Committee emphasized that the informal dispute settlement was a crucial component of the internal system of administration of justice and called for better incentives to resort to informal conflict resolution. Delegations commended the activities of the Office of the United Nations Ombudsman and Mediation Services and noted the increase in cases that the Office of the Ombudsman had opened in 2015. It also recognized that half of the mediation cases were self-referrals, which signalled a heightened awareness of the benefits of mediation as a conflict resolution mechanism. The Committee encouraged all parties to a work-related dispute to make every effort to settle it early on in the informal system, without prejudice to the right of each staff member to submit a complaint for review in the formal system. The Committee also welcomed recommendations 33 to 35 of the report of the Interim Independent Assessment Panel (ibid., paras. 288-297) and the comments of the Secretary-General (A/71/163, paras. 88-98) regarding mediation processes, mediation settlement and training in conflict management.

Code of conduct for legal representatives and litigants in person

The Sixth Committee welcomed the proposal of the Secretary-General for a single code of conduct for all legal representatives, as requested by the General Assembly in its resolution 70/112 (see A/71/164, annex IV) and recommended approving the draft with amendments. Delegations stated that the code of conduct should be considered a living document, which should be improved or updated in the light of lessons learned. The amended draft code of conduct can be found in the appendix below.

Amendments to the statutes of the Dispute Tribunal and the Appeals Tribunal

Having reviewed the proposals of the Secretary-General (see A/71/163, para. 158 (a) and (j)), the Committee recommended approving the following amendments to the relevant articles of the statute of the United Nations Dispute Tribunal:

> Amend article 4, paragraph 3 (a), of the statute of the Dispute Tribunal to add the words "and impartial" and add an article 4, paragraph 3 (c), reading "Be fluent, both orally and in writing, in English or French".
>
> Amend article 4, paragraph 7, of the statute of the Dispute Tribunal to add the words "who shall have the authority, inter alia, to monitor the timely delivery of judgments".

The Committee also recommended amending the statute of the United Nations Appeals Tribunal to make an equivalent amendment to that proposed by the Secretary-General for article 4, paragraph 7, of the statute of the Dispute Tribunal, as follows:

> Add a new article 4, paragraph 4, to the statute of the United Nations Appeals Tribunal, reading: "The President shall have the authority, inter alia, to monitor the timely delivery of judgments."

Addition of three permanent full-time judges to the Dispute Tribunal

The Sixth Committee noted that, in his report on the findings and recommendations of the Interim Independent Assessment Panel (A/71/163, paras. 126-129), the Secretary-General recommended the addition of three permanent full-time judges to the Dispute Tribunal and provided his reasons therefor. This measure was also long advocated by the Internal Justice Council (see A/70/188, paras. 70 and 71; A/70/190, para. 31; A/69/205, paras. 152-155; and A/67/98, para. 22), the judges of the Dispute and Appeals Tribunals (see A/68/306, annex II, paras. 6 and 7; see also A/67/538, annex, enclosure I, paras. 8 and 9) and the Interim Independent Assessment Panel (A/71/62/Rev.1, recommendation 47 and paras. 367-370). The Sixth Committee recalled that it had previously emphasized the need to find a long-term solution to the question of the composition of the Tribunal that would ensure the sustained efficiency of the performance of the formal system (see letters from the Chair of the Sixth Committee to the President of the General Assembly in 2012 (A/C.5/67/9, annex), 2013 (A/C.5/68/11, annex) and 2014 (A/C.5/69/10, annex)). The Sixth Committee also recalled that in previous years it had acknowledged that the extension of the positions of three ad litem

judges was a necessary temporary measure aimed at ensuring the continued delivery of justice (see the letters from the Chair of the Sixth Committee to the President of the Assembly cited above and A/C.5/70/9, of 2015). The Committee encouraged the Assembly to take the aforementioned views into consideration.

Receivability before the Dispute Tribunal

Regarding recommendation 44 of the Interim Independent Assessment Panel report (A/71/62/Rev.1, paras. 344 and 345) that the Tribunals adopt and apply a mechanism of early resolution of receivability issues, delegations reiterated the importance of judicial economy in the proceedings. The Sixth Committee supported the view of the Secretary-General (A/71/163, paras. 117 and 118) that no new procedural device for that purpose was necessary, as the Dispute Tribunal already had authority to consider motions on receivability as an initial matter, separately from the merits of a case. Furthermore, the Sixth Committee shared the view of the Secretary-General (ibid., para. 119) that Dispute Tribunal decisions on receivability should remain appealable.

Remuneration for interlocutory motions

Some delegations noted the increase in the number of appeals received by the Appeals Tribunal over the past year. The Sixth Committee agreed with the view expressed by the Interim Independent Assessment Panel (A/71/62/Rev.1, para. 377) that the Tribunal should deal with urgent motions *in limine* as preliminary issues that would provide early indicators to the parties whether to proceed or settle, thereby reducing the number of appeals. In this regard, delegations also supported the recommendation of the Internal Justice Council to extend time limits for filing an appeal to permit settlement discussions and acknowledged that the issue was currently under review.

Delegations agreed with the Secretary-General's emphasis on the importance of interlocutory motions before the Appeals Tribunal and noted that the question of compensation for the work on such motions should be given careful consideration in the Fifth Committee.

Complaints by non-staff personnel

The Sixth Committee expressed gratitude for the information provided by the Secretary-General, at the request of the General Assembly, in his report on the activities of the Office of the United Nations Ombudsman and Mediation Services (A/71/157) regarding the number and nature of cases brought forward by non-staff personnel. Delegations recalled that the Committee had repeatedly highlighted that the United Nations should ensure that effective remedies were available to all categories of personnel, including non-staff personnel, and had recommended that the question be addressed in the envisaged interim assessment. The Committee notes that the Interim Independent Assessment Panel has made a recommendation in that regard.

Delegations noted the views expressed by the Interim Independent Assessment Panel (A/71/62/Rev.1, recommendation 23 and paras. 233-243) and the Secretary-General (A/71/163, paras. 58-62), as well as the three options for a remedy system

for non-staff personnel elaborated by the Internal Justice Council (A/71/158, paras. 142-153 and annex I, para. 13).

Delegations received information presented orally by representatives of the Secretariat, in particular with regard to reports of the Secretary-General on the administration of justice at the United Nations (A/66/275, including annex II, "Proposal for recourse mechanisms for non-staff personnel", and A/67/265, including annex IV, "Expedited arbitration procedures for consultants and individual contractors" and annex VI, "Access to the system of administration of justice for non-staff personnel not covered under the dispute resolution mechanism and other measures available to them for addressing disputes"), as well as information from the Internal Justice Council.

With a view to updating available information in this regard and to assessing how effective remedies are provided to non-staff personnel, delegations requested the Secretary-General to prepare, with a view to informing the discussion at the seventy-second session of the General Assembly, a compilation setting out the categories of non-staff personnel and the remedies available to them, in tabular form, and providing figures for the number of disputes brought by non-staff personnel and the types of remedies used since 2009, to the extent available, and to be used going forward. Such information should include:

(a) The number of disputes brought before the system of justice and/or any other measures for addressing disputes available to each category of non-staff personnel and an indication of how such disputes were resolved;

(b) The number of disputes brought before national jurisdictions and an indication of how such disputes were resolved;

(c) The practical measures that have been taken so far by the United Nations to ensure the proper implementation of the system and to avoid gaps, as well as any other good practices, including in such matters as the translation of documents into local languages, the ability to be heard, access to arbitration, information given to non-staff personnel on available remedies and so on. It is suggested that the Secretariat prepare a questionnaire to that effect;

(d) Information on how United Nations specialized agencies and related bodies provide remedies to non-staff personnel.

Protection against retaliation

Delegations noted the different views of the Interim Independent Assessment Panel (A/71/62/Rev.1, recommendation 24 and paras. 243-246) and the Secretary-General (A/[illegible]/63, paras. 63-66) with regard to the protection of staff members from retaliation for appearing as witnesses or for lodging an appeal. In this regard, the Sixth Committee considered that protection against retaliation should be strengthened and requested the Secretary-General to report at the next session of the General Assembly on ways to strengthen implementation of the existing system.

Investigations

Taking note of the views of the Interim Independent Assessment Panel (A/71/62/Rev.1, recommendation 58, and, in particular, paras. 93 and 396-399) and

the response of the Secretary-General in this regard (A/71/163, paras. 146-150), the Sixth Committee recommended that the Secretary-General be requested to provide further information on the improvement of investigations into misconduct and harassment and on the training provided by the Office of Internal Oversight Services to staff members on conducting peer-based investigations.

Closing remarks

The Sixth Committee recommended that the General Assembly include the item entitled "Administration of justice at the United Nations" in the provisional agenda of its seventy-second session.

It would be appreciated if the present letter were brought to the attention of the Chair of the Fifth Committee and be circulated as a document of the General Assembly under agenda item 145, "Administration of justice at the United Nations".

(*Signed*) Danny **Danon**
Chair of the Sixth Committee
at the seventy-first session
of the General Assembly

Appendix

Amended draft code of conduct for legal representatives and litigants in person*

Code of conduct for legal representatives and litigants in person

Preamble

Whereas the General Assembly, in its resolution 69/203 of 18 December 2014, stressed the need to ensure that all individuals acting as legal representatives appearing before the United Nations Dispute Tribunal and the United Nations Appeals Tribunal are subject to the same standards of professional conduct, and requested the submission of a single code of conduct for all legal representatives, without prejudice to other lines of disciplinary authority,

Whereas appropriate standards should also be adopted for litigants in person,

The following provisions are adopted:

Article 1
Definitions

In the present Code, the following terms shall mean:

Code: the present Code of Conduct for Legal Representatives and Litigants in Person acting in proceedings before the United Nations Dispute Tribunal or the United Nations Appeals Tribunal, as approved by the General Assembly;

Legal representative: an individual who acts on behalf of a party ~~or who represents himself or herself~~ in proceedings before the United Nations Dispute Tribunal or the United Nations Appeals Tribunal;

Litigant in person: an individual who represents himself or herself in proceedings before the United Nations Dispute Tribunal or the United Nations Appeals Tribunal;

Party: the applicant or the respondent in proceedings before the United Nations Dispute Tribunal or the appellant or the respondent in proceedings before the United Nations Appeals Tribunal;

Statutes: the statutes of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, as adopted by the General Assembly in its resolution 63/253, as amended;

Rules of procedure: the rules of procedure of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal, as approved by the General Assembly in its resolution 64/119, as amended;

United Nations Dispute Tribunal: the Tribunal established by its statute as the first instance of the two-tier formal system of administration of justice at the United Nations;

* Proposed deletions are shown in strikeout and additions are underlined.

United Nations Appeals Tribunal: the Tribunal established by its statute as the second instance of the two-tier formal system of administration of justice at the United Nations and as the final instance for those entities that have accepted its jurisdiction under article 2, paragraph 10, of its statute;

Tribunal(s): the United Nations Dispute Tribunal and United Nations Appeals Tribunal, individually or collectively.

Article 2
Purpose

The present Code describes the conduct expected of legal representatives and litigants in person in proceedings before the Tribunals in the interest of the fair and proper administration of justice.

Article 3
Acknowledgement

By acting in proceedings before the Tribunals, legal representatives and litigants in person acknowledge the provisions of the present Code.

Article 4
Basic standards

1. Legal representatives and litigants in person shall maintain the highest standards of integrity ~~and professionalism~~ and shall at all times act honestly, candidly, fairly, courteously, in good faith and without regard to external pressures or extraneous considerations.

2. Legal representatives and litigants in person shall act diligently and efficiently and shall avoid unnecessary delay in the conduct of proceedings.

3. Legal representatives should encourage and facilitate dialogue between the parties with a view to settling disputes in appropriate cases.

4. Legal representatives shall maintain the highest standards of professionalism and shall act in the best interests of the party they represent, subject always to upholding the interests of justice and ethical standards.

Article 5
Conflict of interest

1. Legal representatives shall put the interests of the party they represent before their own interests and the interests of others, and shall not represent conflicting interests in proceedings.

2. Where a conflict of interest arises, legal representatives shall promptly:

(a) Disclose the conflict to the party they represent;

(b) Take all reasonable steps to mitigate the conflict; and

(c) Withdraw themselves as legal representatives if the conflict cannot be mitigated.

3. A party may waive a conflict of interest and consent to the legal representative continuing to act in proceedings.

Article 6
Confidentiality

1. Legal representatives and litigants in person shall maintain the confidentiality of the proceedings of the Tribunals in accordance with the provisions of the statutes and rules of procedure, or as otherwise ordered by the Tribunals.

2. Legal representatives and litigants in person shall respect the confidential character of any information imparted to them in confidence in the proceedings.

3. Legal representatives and litigants in person shall not disclose, except as appropriate in the normal course of the proceedings, any document which is inviolable in accordance with applicable legal instruments on privileges and immunities of the United Nations, its specialized agencies or other United Nations entities, unless such document is already public or by authorization of the Secretary-General or the appropriate official of the relevant entity before the Tribunal.

~~3. Legal representatives shall not communicate to any Government, entity, person or any other source any information known to them by reason of their representation that they know or ought to have known has not been made public, except as appropriate to the normal course of their representation or by authorization of the Tribunals.~~

4. The obligations ~~of confidentiality~~ set forth in this article remain even after proceedings ~~the representation~~ before the Tribunals have ~~has~~ ended.

Article 7
Withdrawal of representation

1. Legal representatives may withdraw their representation of a party where they reasonably consider that good cause to do so exists.

2. In withdrawing representation, legal representatives shall take steps to the extent reasonably practicable to protect the party's interests.

3. Legal representatives shall promptly communicate such withdrawal in writing to the party they represent and the relevant Registry.

Article 8
Relations with the Tribunals

1. Legal representatives and litigants in person shall assist the Tribunals in maintaining the dignity and decorum of proceedings and avoiding disorder and disruption.

2. Legal representatives and litigants in person shall be diligent in complying with the statutes, rules of procedure, practice directions and orders, rulings or directions that may be issued by the Tribunals.

Article 9
Administration of the Code

The Tribunals may issue orders, rulings or directions in order to implement the provisions of the present Code.

United Nations A/C.5/71/11

General Assembly

Distr.: General
27 October 2016

Original: English

Seventy-first session
Fifth Committee
Agenda item 145
Administration of justice at the United Nations

Letter dated 26 October 2016 from the President of the General Assembly addressed to the Chair of the Fifth Committee

I have the honour to transmit herewith a letter dated 30 September 2016 from the President of the United Nations Dispute Tribunal, Judge Rowan Downing, with regard to agenda item 145 (see annex).

(*Signed*) Peter **Thomson**

16-18815 (E) 311016

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Annex

I have the honour to transmit unanimous observations and comments by the judges of the United Nations Dispute Tribunal in respect of some of the comments contained in the report of the Secretary-General on the findings and recommendations of the Interim Independent Assessment Panel on the system of administration of justice at the United Nations (A/71/163, dated 18 July 2016) (see enclosure).

The judges provide these observations and comments directly to the General Assembly through your office, there being no other avenue properly or appropriately available, given that to write through the Secretary-General, the only respondent in cases before the Tribunal, would be entirely inappropriate in this instance.

The judges welcome the findings and recommendations of the Interim Independent Assessment Panel. At the same time, they express concern about the persistent lack of recognition for the Tribunal's autonomy and independence on the part of some offices of the Secretariat, which is demonstrated by some of the Panel's findings, the comments contained in the report of the Secretary-General and facts and observations presented in the enclosure hereto.

The judges respectfully submit that the arrangement whereby the same offices of the Secretariat that appear before the Tribunal on behalf of the Secretary-General are vested with the power to determine important issues affecting the Tribunal and its judges' status and conditions of service has led to the misinterpretation and misapplication of General Assembly resolution 63/253 and is inconsistent with the United Nations standards on the independence of the judiciary.

The judges respectfully request the General Assembly to take appropriate steps to ensure the arrangements affecting the day-to-day work of the Tribunal and its judges' status and conditions of service in accordance with the United Nations standards on the independence of the judiciary and the judges' standing as elected officials of a subsidiary organ of the Assembly, in a manner commensurate with the dignity of their office and the burden of responsibilities.

The General Assembly is kindly requested to give consideration to the matters raised. Accordingly, I should be grateful if the present letter and its enclosure could be circulated as a document of the General Assembly, under agenda item 145.

(*Signed*) Rowan **Downing**
President of the United Nations
Dispute Tribunal

Enclosure

Observations and comments by the judges of the United Nations Dispute Tribunal on recommendations contained in the report of the Secretary-General on the findings and recommendations of the Interim Independent Assessment Panel on the system of administration of justice at the United Nations (A/71/163)

Introduction

1. The present document contains observations and comments by the judges of the United Nations Dispute Tribunal in respect of some of the comments contained in the report of the Secretary-General on the findings and recommendations of the Interim Independent Assessment Panel on the system of administration of justice at the United Nations (A/71/163, dated 18 July 2016), together with a number of other matters of concern.

Summary

2. The judges welcome the findings and recommendations of the Interim Independent Assessment Panel (see A/71/62/Rev.1). Concern is expressed about the persistent lack of recognition and appreciation of the autonomy and independence of the Tribunal on the part of some offices of the Secretariat, which can be seen from the Panel's findings and which are further demonstrated by comments contained in the report of the Secretary-General and facts described below that fundamentally misapply General Assembly resolution 63/253. The judges respectfully submit that there is a direct and real conflict of interest experienced through the arrangement whereby the same offices of the Secretariat that appear before the Tribunal on behalf of the Secretary General are vested with the power to determine the status and conditions of service of the judges in the hierarchy of the governing bodies of the United Nations.

3. As such, the judges respectfully request the General Assembly to regulate their status and conditions of service in accordance with the United Nations standards on the independence of the judiciary and their standing as elected officials of a subsidiary organ of the United Nations, in a manner commensurate with the dignity of their office, as officials and not staff members, and the burden of their responsibilities.

Submissions and observations

Recommendation 1
The Office of Administration of Justice should reorganize the distribution of the offices of its respective components in New York

4. The Panel looked at the system components and recommended the relocation of the Office of Administration of Justice from the same floor as the judges of the Dispute Tribunal and the Registries of the Dispute Tribunal and the United Nations Appeal Tribunal. In paragraph 79 of the Panel's report, it is stated that there is a "perception that the Tribunals [are] under the direct authority of the Administration". The Secretary-General states in response that "this perception has

no basis in fact" (see A/71/163, para. 14). Nevertheless, even the appearance of impropriety must be avoided at all costs.

5. The judges respectfully point out that the staff of the Office of Administration of Justice, although working in an independent office, are nevertheless staff members who are subject to the direction and control of the Secretary-General, who is the respondent before the Tribunal. They advise the Secretary-General in respect of a number of matters. It is these facts that create the perception upon which the Panel has commented. The judges share the concern of the Panel and further submit that it is their actual concern that the presence of the Administration in New York immediately adjoining their chambers and the offices of the staff of the Registry assisting them impedes free deliberations and discussion of case-related matters. The judges have direct knowledge of occasions on which some stakeholders and staff members laboured under the unfortunate misapprehension that the Executive Director of the Office was "in charge" of the Tribunal and had management responsibility over the judges. This view is reinforced by the reference on the Office's website that states that "the UN Dispute Tribunal is an entity of the Office of Administration of Justice".[a]

6. The judges, moreover, note that it is most unusual for the administrative offices of any court or tribunal to be located effectively in the same space as the chambers of the judges and their staff. There is no physical separation between the Administration and the judges. This occurs in no other United Nations-established court or tribunal. In fact, most judicial chambers are separated, at the very least, by security doors to ensure that a barrier to entry into the chambers is maintained. While it is stated that the perception is not a fact, the perception, as noted above, is very important. Actual and perceived judicial independence through physical separation from the Administration is central in all justice systems.

7. In addition, it is essential that staff of the Registries not be subject to requests from the Administration, requests that are not only at the expense of time that should be devoted to cases before the Tribunal but also that could be seen as compromising the independence of the staff assisting the judiciary.

8. Furthermore, having the courtroom in New York on the 24th floor of a secure high-rise office building away from the Headquarters Building prevents ready public access to view the Tribunal proceedings. In addition, presence in the Headquarters Building would bring awareness to staff, management, delegates of Member States and members of the public of the existence of the Tribunal and permit them to observe the proceedings. Transparency would be achieved and the reality of independence and accountability demonstrated.

[a] See the glossary reference to the Tribunal at www.un.org/en/oaj/unjs/glossary.shtml.

Recommendation 4

A clearer institutional link between the Registries and the Tribunals should be established and the status of officer of the court for United Nations staff members for as long as they serve as Registrars or staff of the Registries should be officially created (para. 173)

9. The judges welcome the recommendation and submit that there are several ways to achieve the objective of having the staff of the Registries regard themselves as working for an independent tribunal, while remaining within the confines of the Staff Rules.

10. First, there should be elimination of the dual line of reporting in the formal sense. Currently, the legal officers are the confidential assistants of the judges. They also assist the Registrar. Taking into consideration that the main task of the legal officers is to work on the procedural and substantive matter of the cases before the Tribunal, they must be subordinate to the judges, directly or hierarchically through the Registrars as the most senior legal officer in the Registry.

11. Second, the legal staff of the Tribunal should not be in a position in which they can be called upon to disclose any matter concerning the judicial work of the chambers without the express consent of a judge. Currently, under the Staff Regulations and Rules of the United Nations, they could be required to provide information if it is requested by the Administration. Failure to provide such information may make them appear uncooperative, which may be reflected in any formal appraisal of their work, as is made annually by way of the e-performance document. The judges intend to address the matter at the operational level but still deem it necessary to have this risk attenuated through structural changes.

12. Third, the judges must have meaningful input into performance evaluation decisions concerning the legal officers and the Registrars.

Recommendation 5

Judges should have a formal role in the process of selection and appointment of the Registrars and their staff, as well as in the evaluation of their performance (para. 173)

13. The comments of the Secretary-General on the Panel's findings, with respect, distort the thrust of the Panel's recommendation by focusing on the use of the word "appointment". The judges do not propose that the ultimate appointment of staff be done other than pursuant to the established rules.

14. They nevertheless respectfully submit that selection of staff has been done involving judges in all international and hybrid tribunals, which is squarely consistent with the Charter of the United Nations. This involvement may vary depending on seniority and or the actual significance of the post concerned. It needs to be stressed, however, that legal officers of United Nations courts and tribunals are staff members with very specific functions and obligations for which they must demonstrate proficiency. Therefore, the input of the judges when evaluating candidates is of paramount importance.

15. A potential problem of recusal in a dispute before the Tribunal involving staff members of internal justice institutions will arise independently of whether the staff

member was selected with or without the participation of the judges because it is inherent to the position of all staff employed by the internal justice institutions, and a rejected contender will, likewise, question the selection of the person actually selected. Statistically, the risk of such a dispute is very low and, practically speaking, the issue could be resolved by sending the case to another seat (duty station) of the Tribunal. Thus, the argument put forth in the response of the Secretary-General to the Panel is lacking in any practical legal basis.

Recommendation 6
The functions of the Principal Registrar in support of the Tribunals should be further clarified (para. 175)

16. The judges concur that the function of the Principal Registrar set out in section 4 of the Secretary-General's bulletin on the organization and terms of reference of the Office of Administration of Justice (ST/SGB/2010/3) is unclear. It is noted that section 4.3 (a) of the bulletin expressly provides a role for the Principal Registrar in respect of "enforcing compliance with the rules of procedure of the Tribunals by the parties". It is inconceivable that the Administration should have considered it appropriate to include such a provision, given that it is clearly a judicial function. There is no envisaged implementation of this provision, in any event. In addition, there is a direct conflict because there is a reference to such enforcement being at both the Dispute Tribunal and Appeals Tribunal levels. Furthermore, in section 4.3 (b) of the bulletin, the Principal Registrar is to have the function of "coordinating and monitoring the maintenance of the Tribunals' registers". The Principal Registrar cannot, without conflict, have direct access to the registers of both the Dispute Tribunal and the Appeals Tribunal.

Recommendation 7
The legal status of the judges of the Tribunals has to be further clarified:
(a) The emoluments and conditions of service of the Dispute Tribunal judges should be established specifically for them and not by reference to the D-2 level;
(b) It should be clearly specified that the only "rank" that the judges of the Tribunals possess is that of a judge of the internal judicial system of the United Nations;
(c) The judges of the Appeals Tribunal should be recognized as officials other than Secretariat officials and should be granted the privileges and immunities currently enjoyed by the Dispute Tribunal judges under article V, section 18, of the Convention on the Privileges and Immunities of the United Nations (para. 180)

17. The Secretary-General notes that "the Panel took the view that the independence of the judiciary was linked to the issue of their status" (see A/71/163, para. 23).

18. The judges respectfully point out that it is not only the Panel's view but also a fundamental international standard that the independence of the judiciary is linked to the manner in which the status of the judiciary is defined and administered. In particular, the Basic Principles on the Independence of the Judiciary provide in principle 11 that "the term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law". The attendant Procedures for the Effective

Implementation of the Basic Principles on the Independence of the Judiciary, endorsed by the General Assembly, in procedure 5 mandate "offering judges appropriate personal security, remuneration and emoluments".

19. The Council of Europe, in its recommendation No. R (94) 12, under principle I, "General principles on independence of judges", provides that "the terms of office of judges and their remuneration should be guaranteed by law". Under principle III, "Proper working conditions", it requires "ensuring that the status and remuneration of judges is commensurate with the dignity of their profession and burden of responsibilities".

20. In the same vein, the standard is expressed by civil society in principle 4.1 of the Burgh House Principles on the Independence of the International Judiciary, stating that "judges' essential conditions of service shall be enumerated in legally binding instruments". In principle 4.2, it is stated that "no adverse changes shall be introduced with regard to judges' remuneration and other essential conditions of service during their terms of office". Likewise, the Universal Charter of the Judge provides as follows in article 13: "The judge must receive sufficient remuneration to secure true economic independence. The remuneration ... must not be reduced during his or her judicial service."

21. In more express terms, the draft Universal Declaration on the Independence of Justice, prepared under the auspices of the Economic and Social Council and recommended by the Commission on Human Rights as a tool for the implementation of the Basic Principles on the Independence of the Judiciary, provides as follows:

> Tenure
>
> 16. (a) The term of office of the judges, their independence, security, adequate remuneration and conditions of service shall be secured by law and shall not be altered to their disadvantage.

22. As a corollary to the principle of independence, as concluded by the International Commission of Jurists with regard to a review of international jurisprudence, "it is crucial that judges are not subordinated hierarchically to the executive or legislative, nor that they are civil employees of these two powers".[b]

23. The judges submit that their status, including remuneration, is not sufficiently "secured by law", that is, in this case, the resolutions of the General Assembly. As such, their status and remuneration are exposed to unilateral interpretations by the Office of Human Resources Management. These interpretations, as a rule, disclose a lack of understanding of the judges' separate status, seeking to treat them as civil staff employees of the Secretariat, are to their disadvantage and are often made in an arbitrary manner in breach of the applicable administrative issuances.

24. The judges are certainly not staff of the Secretariat nor members of an "entity" of the Office of Administration of Justice. They are not under or within the

[b] International Commission of Jurists, *International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors: A Practitioner's Guide* (Geneva, 2007), p. 25. This cites cases before the European Court of Human Rights, the Working Group on Arbitrary Detention and the Inter-American Commission on Human Rights.

contemplation of the International Civil Service Commission. As noted above, the judges are elected officials of a subsidiary organ of the General Assembly.[c] As recognized by the Secretary-General in paragraph 24 of his report, "judges are paid by reference salaries at the D-2 level" and "such reference merely defines the salary amount, not the legal status of the judges". This statement has been directly contradicted by statements originating from the Office of Human Resources Management, which claimed that "conditions of service for the UNDT Judges [are] equivalent to staff members at the D-2 level" and "they will be subject to the provisions of the Staff Regulations and Staff Rules and relevant administrative issuances, together with such amendments as may from time to time be made to such Staff Regulations and Staff Rules and administrative issuances".[d] The judges find this to be in violation of United Nations standards on the independence of the judiciary, their status as elected officials of a subsidiary organ of the Assembly and a fundamental misrepresentation of Assembly resolution 63/253.

25. The judges recall that in its resolution 63/253 the General Assembly specifically lists those provisions of the Staff Rules that are to be applied to them. Nevertheless, the Staff Rules are improperly applied to them, for example:

- Staff assessment applicable to staff has been levied upon judges' salaries, which has no basis in the General Assembly resolution, nor could it be otherwise justified. The judges understand that no staff assessment deductions apply to the other judges in the United Nations system, those being the judges of the International Court of Justice, the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994 (now the International Residual Mechanism for Criminal Tribunals) and the hybrid courts established through the United Nations — the Special Tribunal for Lebanon and the Extraordinary Chambers in the Courts of Cambodia (through the United Nations Assistance to the Khmer Rouge Trials). The comparison made by the Secretary-General with the Chair of the Advisory Committee on Administrative and Budgetary Questions and the inspectors of the Joint Inspection Unit is not applicable. Those people are not judges. They carry out an independent function directly for the General Assembly. The only similarity with judges is that they, just as the judges of the Dispute Tribunal, the Appeals Tribunal, the International Court of Justice, the International Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda (now the Residual Mechanism), the Special Tribunal and the Extraordinary Chambers, have immunities as non-Secretariat officials of the United Nations.

- On the occasion of the newly elected Tribunal judges taking office in July 2016, the Office of Human Resources Management first purported to issue

[c] See www.un.org/en/ga/about/subsidiary/other.shtml.

[d] As set out in the new judges' purported "letters of appointment" of June 2016.

"appointment letters" as though the judges were staff members. Moreover, such letters purported to unilaterally decrease the judges' emoluments as though they were staff members and introduce a clause subordinating the judges to all present and future staff rules and regulations. The judges refused to accept the provisions. It is submitted that, in accordance with the "remuneration adequately secured by law" principle, the reference to the D-2, step IV, level as defining the salary amount must not be taken to allow any further extension of staff rules and regulations. In addition, as cited above, it is an international standard that judges' remuneration not be decreased during their term of office.

- It is noted that, when the application of a staff rule would act to the judges' advantage, the Office of Human Resources Management refused its application. It, for example, refused to grant an incremental step increase, arguing that the judges' salaries were established at a flat rate.

- The judges note that their status is not respected with regard to official travel. The Tribunal, being the successor of the United Nations Administrative Tribunal and a subsidiary organ of the General Assembly, is covered by the Secretary-General's bulletin on rules governing payment of travel expenses and subsistence allowances in respect of members of organs or subsidiary organs of the United Nations (ST/SGB/107/Rev.6). Moreover, in section 1.2 of administrative instruction ST/AI/2013/3 on official travel, it is made clear that the Secretary-General's bulletin is applicable in its stead. Nevertheless, the Office of Human Resources Management applied daily subsistence allowance and travel status applicable to staff of a rank lower than D-2, thereby depriving the judges of their due entitlements. The Office has advised the judges that it regards the Secretary-General's bulletin as outdated and no longer applicable. This is an arbitrary act and improper. It is also to be noted that the Office even denied the judges the payment of daily subsistence allowance due to D-2-level officials other than staff members under section 4.2 of administrative instruction ST/AI/2014/2 on the system of daily subsistence allowance.

- With some variations among the headquarters locations, the judges have been reflected in Umoja as staff members and made to wear "staff" grounds passes. These administrative arrangements are inaccurate and inappropriate external manifestations of a status of civil employees of the Secretariat, which undermines trust in their independence and impartiality. The automatic application of the Staff Rules in Umoja, moreover, causes confusion as to the judges' entitlements.

- The half-time judges, notwithstanding that they are specifically noted as being eligible for a pension, with a deduction being made from their emoluments in respect of such, are at real risk of being regarded as not having contributed for the vesting period of five years and are thus likely to be excluded from receipt of a pension, given that the intention of the General Assembly appears not to have been implemented. Their period of engagement may be counted as three and a half years. Their emoluments have the pension contribution deducted therefrom. The purported entitlement as provided may be thus entirely illusory, owing to the application of the regulations and rules of the United Nations

Joint Staff Pension Fund (art. 31 (b) (i)), without consideration of the rights expressly given to the half-time judges by the Assembly.

- The full-time judges receive only the pension accruing as though they were staff members. Their position is not comparable with other judges in the United Nations system, where a full pension is payable at the conclusion of the term of appointment, recognizing their service and limited appointments.

26. The judges respectfully submit that it follows from the principle that remuneration and conditions of service be "adequately secured by law" that their salaries and emoluments must be defined in clear and definite terms and not by blanket reference to the Organization's rules and regulations wherein the Administration acts as delegated legislator and ultimate interpreter. It is submitted that, when it comes to interpreting their salaries and emoluments, the importance of the principle "adequately secured by law" is even more significant given that the Administration has a direct conflict of interest in this particular case. It arises, first, in the aspect of competing for the funds within the same budget of the Secretariat; second, it is obvious that the same legal personnel of the Office of Human Resources Management who defend the position of the respondent in cases before the Tribunal are called upon to take decisions on the judges' remuneration. This situation contradicts the postulate that the status of judges be "commensurate with the dignity of their profession and burden of responsibilities".

27. Another conflict of interest arises on the part of the judges who, when subjected to the Staff Rules regime, as augmented, modified and interpreted by the Office of Human Resources Management, are exposed to the risk of disputing these rules and interpretations in their own cases and taking positions that will then compromise their impartiality in all similar disputes. It is submitted that the judges are, by international standards, bound to refrain from expressing views that might reasonably be expected to affect the outcome of the pending and potential proceedings, as well as recuse themselves from any case in which it may appear that they are unable to decide on the matter impartially. See, for example, value 2, "Impartiality", of the Bangalore Principles of Judicial Conduct (E/CN.4/2003/65) and the code of conduct for the judges of the Dispute Tribunal and the Appeals Tribunal, as approved by the General Assembly in its resolution 66/106.

28. The judges therefore respectfully request the General Assembly, as a matter of great importance, to regulate salaries and emoluments so as to guarantee them in clear and certain terms by eliminating the ability to interpret these terms by the Office of Human Resources Management and to protect impartiality by insulating the judges, to the extent possible, from interacting with the Office.

29. The judges further submit that, whereas their emoluments have been subjected to burdens applicable to staff, they themselves do not enjoy the benefits applicable to staff. As such, even by comparison with staff at the D-2, step 4, level, their remuneration is not at an appropriate level. The judges recall that, unlike staff members, they have no prospect of extension of their term of service or of promotion, receive no incremental step increases and do not benefit from mobility. Their conditions of service are substantially less than those of all other actors who interact directly with the Tribunal, such as the Executive Director of the Office of

Administration of Justice, the Assistant Secretary-General for Human Resources Management and the Assistant Secretary-General and United Nations Ombudsman.

30. In concrete terms, the judges would respectfully request the General Assembly to consider that they cumulatively represent only seven full-time posts, disposing of an ever-growing case load, now rising to 306 cases disposed of in the past year to 31 August 2016 and 364 pending cases as at 9 September 2016. The expense of ensuring that they have a proper status will have no bearing on the overall expenses of the Secretariat and its more than 44,000 staff within the jurisdiction of the Tribunal. Accordingly, the judges respectfully request the Assembly to endorse the following considerations for amending the statute of the Tribunal, aimed at bringing their emoluments and conditions of service into line with international standards:

(a) Emoluments defined in clear, finite and unambiguous terms;

(b) Salary at the Assistant Secretary-General level, pursuant to the original proposal by the Redesign Panel on the United Nations system of administration of justice;

(c) Abolishment of staff assessment in respect of their emoluments;

(d) Maintenance of emoluments and prevention of any degradation of conditions during their term of office;

(e) Incremental step increases;

(f) Confirmation of the accrual of the separation grant;

(g) Pensions for full-time judges commensurate with those received by the judges of other United Nations tribunals after the period of their appointment;

(h) Vested pensions for half-time judges after seven years of service.

Recommendation 8

Both Tribunals should submit their annual reports directly to the General Assembly and their Presidents should be invited to present them to the Assembly (para. 183)

31. The judges respectfully agree that the issue of direct reporting to the General Assembly is for it to determine. They believe, however, that the recommendation reflects their views, given that the placement of an intermediary between the judiciary and the legislative body is unusual and unwarranted. It is not consistent with the International Court of Justice, the International Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda (now the Residual Mechanism) and the Special Tribunal for Lebanon, which report directly.

Recommendation 14

Provision should be made for knowledge of human rights law and international law in the criteria for appointment of judges, with proven practical experience in administrative law and criminal justice and relevant institutional knowledge being desirable. Due diligence should be exercised in the recruitment process (para. 210)

32. The Secretary-General refers in paragraph 41 of his report to adding "fluency in either English or French to the qualifications of Dispute Tribunal judges".

33. While English and French are the working languages of the Tribunal, it is to be noted that systemic diversity is important and that a requirement of fluency in either language may lead to the exclusion of available candidates. The judges respectfully suggest that knowledge of either language, with an ability and preparedness to gain fluency in the other, may be a more appropriate requirement.

Recommendation 15
There should be a better induction process for judges before they assume their duties (para. 211)

34. The judges support the views of the Secretary-General regarding the induction process for judges before the assumption of their duties.

Recommendation 50
The term of the President of the Dispute Tribunal should be extended to a longer period, for example three and a half years (para. 371)

35. The judges note and support the comments of the Secretary-General in reference to the recommendation to extend the term of the President of the Tribunal. The considerable work involved in the presidency for both the President and the Registry at which he or she is located is such that a one-year term is appropriate owing to the impact on the work of both the judge and the staff of the Registry. Special post allowance should be payable to the President and the Registrar at the seat of the Tribunal at which the President is located during the term of office. Furthermore, the President should remain in office for one year to give more judges the opportunity to serve as President, thereby increasing the geographical diversity of the presidency. The period of appointment should begin on 1 January each year to better align with the United Nations calendar.

United Nations A/C.5/71/12

General Assembly

Distr.: General
4 November 2016

Original: English

Seventy-first session
Fifth Committee
Agenda items 134 and 98 (kk)

Programme budget for the biennium 2016-2017

General and complete disarmament: taking forward multilateral nuclear disarmament negotiations

Taking forward multilateral nuclear disarmament negotiations

Programme budget implications of draft resolution A/C.1/71/L.41

Statement submitted by the Secretary-General in accordance with rule 153 of the rules of procedure of the General Assembly

I. Introduction

1. At its 22nd meeting, on 27 October 2016, the First Committee adopted draft resolution A/C.1/71/L.41 by a recorded vote of 123 to 38, with 16 abstentions. A statement of the programme budget implications of the draft resolution (A/C.1/71/L.70) was before the Committee.

II. Requests contained in the draft resolution

2. Under the terms of operative paragraphs 8, 10, 11, 13 and 14 of draft resolution A/C.1/71/L.41, the General Assembly would:

(a) Decide to convene a United Nations conference in 2017 to negotiate a legally binding instrument to prohibit nuclear weapons, leading towards their total elimination;

(b) Decide that the conference shall convene in New York, under the rules of procedure of the Assembly unless otherwise agreed by the conference, from 27 to 31 March and from 15 June to 7 July 2017, with the participation and contribution of international organizations and civil society representatives;

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(c) Decide that the conference will hold a one-day organizational session in New York as soon as possible;

(d) Decide that the conference shall submit a report on its progress to the Assembly at its seventy-second session, which will assess the progress made in the negotiations and decide the way forward;

(e) Request the Secretary-General to provide the support necessary to convene the conference and to transmit the report of the conference to the Conference on Disarmament and the Disarmament Commission and to the United Nations high-level international conference on nuclear disarmament foreseen in paragraph 6 of resolution 68/32.

III. Relationship of the proposed requests to the biennial programme plan and priorities for the period 2016-2017 and to the programme budget for the biennium 2016-2017

3. The requested activities referred to in the draft resolution relate to programme 1, General Assembly and Economic and Social Council affairs and conference management, and programme 3, Disarmament, of the biennial programme plan and priorities for the period 2016-2017 (see A/69/6/Rev.1) and section 2, General Assembly and Economic and Social Council affairs and conference management, and section 4, Disarmament, of the programme budget for the biennium 2016-2017 (A/70/6 (Sect. 2) and A/70/6 (Sect. 4), respectively).

IV. Activities by which the proposed requests would be implemented

4. Pursuant to the request contained in operative paragraphs 8, 10 and 11 of the draft resolution, it is envisaged that the United Nations conference to negotiate a legally binding instrument to prohibit nuclear weapons, leading towards their total elimination, would hold a total of 42 meetings (21 days) in New York with interpretation in all six languages, which would constitute an addition to the meetings workload for the Department for General Assembly and Conference Management in 2017. This would entail additional requirements for meetings services in the amount of $252,000. The details of the meetings are as follows:

(a) One-day organizational meeting consisting of 2 meetings in early 2017;

(b) Five-day first session consisting of 10 meetings from 27 to 31 March 2017;

(c) Fifteen-day second session consisting of 30 meetings from 15 June to 7 July 2017.

5. Furthermore, the request for documentation contained in operative paragraphs 8, 10, 13 and 14 of the draft resolution would constitute an addition to the documentation workload for the Department for General Assembly and Conference Management of 12 pre-session documents (total of 31,800 words), 18 in-session documents (total of 47,700 words) and 2 post-session documents (total of 21,400

words), to be issued in all six languages in 2017. This would entail additional requirements for documentation services in the amount of $440,600.

6. Pursuant to operative paragraph 14 of the draft resolution, the Office for Disarmament Affairs would provide the substantive services necessary for the convening of the conference. All Member States would be encouraged to participate in the conference. The conference would also be convened with the participation and contribution of international organizations and civil society representatives.

V. Modifications required in the programme of work and the programme budget for the biennium 2016-2017

7. To meet the provisions of the draft resolution, the outputs under subprogramme 2 of section 4, Disarmament, of the programme budget for the biennium 2016-2017 would need to be amended in respect of the information and outreach activities during the implementation of the budget, as follows:

Paragraph 4.46

Under "(a) Servicing of intergovernmental and expert bodies (regular budget and extrabudgetary)", add:

"(vii) United Nations conference on a legally binding instrument to prohibit nuclear weapons:

a. Substantive servicing of meetings (42);

b. Parliamentary documentation: working papers (30); report of the conference (1);"

VI. Financial implications of the proposals

8. Additional conference-servicing resource requirements in the amount of $692,600 under section 2, General Assembly and Economic and Social Council affairs and conference management, would be required under the programme budget for the biennium 2016-2017 to implement the additional workload. The details of these additional one-time resource requirements are provided in the table below.

(United States dollars)

Conference-servicing resource	*Amount*
Interpretation	252 000
Pre-session documentation	139 000
In-session documentation	207 600
Post-session documentation	94 000
Total	**692 600**

VII. Potential for absorption during the biennium 2016-2017

9. No provisions have been made in the programme budget for the biennium 2016-2017 for the implementation of the activities requested in operative paragraphs 8, 10, 11, 13 and 14 of the draft resolution. It is not possible at present to identify activities within the relevant sections of the programme budget for the biennium 2016-2017 that could be terminated, deferred, curtailed or modified during the biennium. It is therefore necessary that the additional one-time resource requirements in the amount of $692,600 be provided through an additional appropriation for the biennium 2016-2017.

VIII. Contingency fund

10. Under the procedures established by the General Assembly in its resolutions 41/213 and 42/211, a contingency fund is established for each biennium to accommodate additional expenditures derived from legislative mandates not provided for in the programme budget.

IX. Conclusion and action required of the General Assembly

11. **Should the General Assembly adopt draft resolution A/C.1/71/L.41, additional resource requirements in the amount of $692,600 would arise under section 2, General Assembly and Economic and Social Council affairs and conference management, of the programme budget for the biennium 2016-2017. The amount of $692,600 would require an additional appropriation for the biennium 2016-2017 to be approved by the Assembly and, as such, would represent a charge against the contingency fund.**

United Nations A/C.5/71/13

General Assembly

Distr.: General
4 November 2016

Original: English

Seventy-first session
Fifth Committee
Agenda items 134 and 98 (a)

Programme budget for the biennium 2016-2017

General and complete disarmament: treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices

Treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices

Programme budget implications of draft resolution A/C.1/71/L.65/Rev.1

Statement submitted by the Secretary-General in accordance with rule 153 of the rules of procedure of the General Assembly

I. Introduction

1. At its 22nd meeting, on 27 October 2016, the First Committee adopted draft resolution A/C.1/71/L.65/Rev.1 by a recorded vote of 177 to 1, with 10 abstentions. A statement of the programme budget implications of the draft resolution was before the Committee (A/C.1/71/L.71/Rev.1).

II. Requests contained in the draft resolution

2. Under the terms of operative paragraphs 2, 3, 4 and 7 of draft resolution A/C.1/71/L.65/Rev.1, the General Assembly would:

(a) Request the Secretary-General to establish a high-level expert preparatory group on a fissile material cut-off treaty, with a membership of 25 States chosen on the basis of equitable geographical representation, which will operate by consensus.[1]

[1] The high-level expert preparatory group on a fissile material cut-off treaty will be governed by the rules and established practices applicable to groups of governmental experts.

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without prejudice to national positions in future negotiations, and which will meet in Geneva for two sessions of two weeks each, the first in 2017 and the second in 2018, to consider and make recommendations on substantial elements of a future non-discriminatory, multilateral and internationally and effectively verifiable treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices, on the basis of CD/1299 and the mandate contained therein. The preparatory group will also examine, with a view to making possible recommendations, the report of the Group of Governmental Experts, mandated pursuant to resolution 67/53, as contained in document A/70/81, as well as the views submitted by Member States as contained in documents A/68/154 and Add.1 and A/71/140 and Add.1;

(b) Request the Chair of the high-level expert preparatory group on a fissile material cut-off treaty to organize, in New York, two two-day informal consultative meetings, open-ended so that all Member States can engage in interactive discussions and share their views, which the Chair shall convey to the preparatory group for its consideration. The first meeting will convene in 2017 to consider the report of the Group of Governmental Experts, and the second will convene in 2018 in order for the Chair to provide a report in his own capacity on the work of the preparatory group;

(c) Call upon the Secretary-General to transmit the report of the high-level expert preparatory group on a fissile material cut-off treaty to the General Assembly at its seventy-third session and to the Conference on Disarmament prior to its 2019 session;

(d) Request the Secretary-General to render the high-level expert preparatory group on a fissile material cut-off treaty and its Chair all the necessary assistance, including the provision of relevant documents.

III. Relationship of the proposed requests to the biennial programme plan and priorities for the period 2016-2017 and to the programme budget for the biennium 2016-2017

3. The requested activities referred to in the draft resolution relate to programme 1, General Assembly and Economic and Social Council affairs and conference management, programme 3, Disarmament, and programme 25, Management and support services, of the biennial programme plan and priorities for the period 2016-2017 (see A/69/6/Rev.1) and section 2, General Assembly and Economic and Social Council affairs and conference management, section 4, Disarmament, and section 29F, Administration, Geneva, of the programme budget for the biennium 2016-2017 (A/70/6 (Sect. 2), A/70/6 (Sect. 4) and A/70/6 (Sect. 29F)), respectively).

IV. Activities by which the proposed requests would be implemented

4. Pursuant to operative paragraphs 2 and 3 of the draft resolution, it is envisaged that the high-level expert preparatory group on a fissile material cut-off treaty

would meet in Geneva for two sessions of two weeks each, the first session, in 2017, of 10 days' duration, consisting of 20 meetings (1 meeting in the morning and 1 in the afternoon), and the second session, in 2018, of 10 days' duration, consisting of 20 meetings (1 meeting in the morning and 1 in the afternoon), for a total of 40 meetings (20 days). It is envisaged that the Chair of the preparatory group would hold, in New York, two two-day informal consultative meetings in 2017 and 2018. The first would convene in 2017 for two days with four meetings (one meeting in the morning and one in the afternoon); the second would convene in 2018 for two days with four meetings (one meeting in the morning and one in the afternoon), for a total of eight meetings (four days). Those meetings would require interpretation in the six official languages and would constitute an addition to the meetings workload for the Department for General Assembly and Conference Management in 2017 and 2018. This would entail additional resource requirements for meetings services in the amount of $158,000 in both 2017 and 2018. In addition, sound technician and recording services would be required in support of the meetings which would entail additional resource requirements in the amount of $6,900 in both 2017 and 2018.

5. Furthermore, the request for documentation contained in operative paragraphs 2, 3, 4 and 7 of the draft resolution would constitute an addition to the documentation workload for the Department for General Assembly and Conference Management of 5 pre-session documents (total of 8,500 words) to be issued in the six official languages, 25 in-session documents (total of 33,000 words) to be issued in English only and 1 post-session document (10,700 words) to be issued in the six official languages in both 2017 and 2018. This would entail additional resource requirements for documentation services in the amount of $131,000 in both 2017 and 2018.

V. Modifications required in the programme of work and the programme budget for the biennium 2016-2017

6. To meet the provisions of the draft resolution, the outputs under section 4, Disarmament, of the programme budget for the biennium 2016-2017 would need to be amended in respect of activities during the implementation of the budget, as follows:

Subprogramme 1: Multilateral negotiations and deliberations on disarmament and arms limitation

Paragraph 4.40

Under "(a) Servicing of intergovernmental and expert bodies (regular budget and extrabudgetary)", add:

"(xi) General Assembly: high-level expert preparatory group on a fissile material cut-off treaty:

a. Substantive servicing of meetings in 2017 (20);

b. Parliamentary documentation: pre-session documents (5); in session documents (25); and post-session document (1);"

Subprogramme 2: Weapons of mass destruction

Paragraph 4.46

Under "(a) Servicing of intergovernmental and expert bodies (regular budget and extrabudgetary)", add:

"(vii) General Assembly: high-level expert preparatory group on a fissile material cut-off treaty (informal consultative meetings)"

a. Substantive servicing of meetings in 2017 (4);

b. Parliamentary documentation: post-session document (1);"

VI. Financial implications of the proposals

7. Additional one-time resource requirements in the amount of $591,800 under section 2, General Assembly and Economic and Social Council affairs and conference management, and section 29F, Administration, Geneva, would be required under the programme budgets for the bienniums 2016-2017 and 2018-2019 to implement the additional workload. The details of these additional resource requirements are provided in the table below.

(United States dollars)

	Total resource requirements	*Resource requirements for 2017*	*Resource requirements for 2018*
Section 2, General Assembly and Economic and Social Council affairs and conference management			
Interpretation	316 000	158 000	158 000
Pre-session documentation	72 600	36 300	36 300
In-session documentation	5 000	2 500	2 500
Post-session documentation	184 400	92 200	92 200
Subtotal, section 2	**578 000**	**289 000**	**289 000**
Section 29F, Administration, Geneva			
Sound technician/recording services	13 800	6 900	6 900
Subtotal, section 29F	**13 800**	**6 900**	**6 900**
Total	**591 800**	**295 900**	**295 900**

VII. Potential for absorption during the biennium 2016-2017

8. No provisions have been made in the programme budget for the biennium 2016-2017 for the implementation of the activities requested in operative paragraphs 2, 3, 4 and 7 of the draft resolution. It is not possible at present to identify activities within the relevant sections of the programme budget for the biennium 2016-2017 that could be terminated, deferred, curtailed or modified

during the biennium. It is therefore necessary that the additional one-time resource requirements in the amount of $295,900 for 2017 be provided through an additional appropriation for the biennium 2016-2017. The remaining resource requirements of $295,900 for 2018 would be included in the proposed programme budget for the biennium 2018-2019.

VIII. Contingency fund

9. Under the procedures established by the General Assembly in its resolutions 41/213 and 42/211, a contingency fund is established for each biennium to accommodate additional expenditures derived from legislative mandates not provided for in the programme budget.

IX. Conclusion and action required of the General Assembly

10. **Should the General Assembly adopt draft resolution A/C.1/71/L.65/Rev.1, additional resource requirements in the amount of $295,900 for 2017, comprising $289,000 under section 2, General Assembly and Economic and Social Council affairs and conference management, and $6,900 under section 29F, Administration, Geneva, would arise under the programme budget for the biennium 2016-2017. The amount of $295,900 would require an additional appropriation for the biennium 2016-2017 to be approved by the General Assembly and, as such, would represent a charge against the contingency fund.**

11. **The additional resource requirements in the amount of $295,900 for 2018, comprising $289,000 under section 2, General Assembly and Economic and Social Council affairs and conference management, and $6,900 under section 29F, Administration, Geneva, would be included in the proposed programme budget for the biennium 2018-2019.**